Supreme Court, U.S.
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No. 93-239

In The

Supreme Court of the United States

October Term, 1993

BRIAN M. BARTLEY,

Petitioner,

vs.

RICHARD A. HANDELSMAN & HANDELSMAN VENTURE GROUP,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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COUNTER STATEMENT OF QUESTIONS INVOLVED

This diversity action concerns whether under Michigan oil and gas joint venture law, Petitioner has set forth sufficient evidence to show that a trier of fact could find a meeting of the minds on an alleged promise by Respondents. In the absence of a written agreement, or any form of commitment signed by Respondents, Petitioner relies upon his varying versions of a breakfast conversation to assert that Respondents became bound, in contract or in *quantum meruit,* to compensate Petitioner beyond his $2,000 monthly salary with a ten percent oil and gas interest, which Petitioner has been unable to clearly define. The only question presented is as follows:

1. Where a plaintiff is unable to clearly define the interest to which he claims he is entitled and which interest constitutes an essential element of the oral contract he alleges, should the issue of whether the parties reached a meetings of the minds as to this essential element nonetheless be turned over to the trier of fact for determination?

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COUNTER STATEMENT OF THE CASE

Petitioner Brian M. Bartley ("Bartley") originally filed suit in the Circuit Court for the County of Washtenaw, State of Michigan seeking "a 10% (ten percent) carried interest in all oil and gas drilling prospects introduced by him" to Respondents. (Complaint, Para. 10/JA at 16).[1] The case was removed to the United States District Court for the Eastern District of Michigan because of diversity of citizenship of the parties and amount in controversy in excess of $50,000.

Respondent Richard Handelsman ("Handelsman") is a former tenured math professor at the University of Illinois who became an options trader on the Chicago Board of Options Exchange in the mid-1970's. (R. 27: Handelsman Dep. of July 6, 1990, pp. 6-7/JA 435-436). Approximately a year prior to meeting Brian Bartley, Handelsman began investing considerable sums of his own money to study what is known as the "Antrim play," a rich source of natural gas in northern Michigan. He did so in preparation for a limited partnership offering of oil and gas interests located in the Antrim area. (R. 27: Handelsman Dep. of July 6, 1990, pp. 32-35/JA 437-440; R. 79: Oesterle Dep. of March 8, 1991, pp. 39-44/JA 497-502).

Handelsman Venture Group ("HVG"), a named Respondent, was formed in April, 1989 among Handelsman, Michael Oesterle, and Jeffrey Wolfson, several weeks before Handelsman ever met Bartley. (R. 79: Oesterle Dep. of March 8, 1991, pp. 22-23/JA 491-492; R. 82: Jeffrey Wolfson Dep. of April 25, 1991, pp. 10-11, 26-28/JA 557-558, 562-564). It was subject to a specific written agreement drafted by Oesterle and signed by the three joint venturers. (R. 87: Defendants' Motion for Summary Judgment

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1. All citations herein are to the record before the Court of Appeals for the Sixth Circuit. The term "JA" refers to Joint Appendix.

dated May 31, 1991, Exhibit A/JA 116-120). Of its members, Wolfson has never met Bartley and is certain that he was never in business with him. (R. 82: Jeffrey Wolfson Dep. of April 25, 1991, pp. 10-11, 26-28/JA 557-558, 562-564). Most notably, however, Oesterle himself, the drafter of the joint venture agreement, a member of the joint venture, and friend and ally of Bartley, is clear that Bartley was never a member of Handelsman Venture Group. (R. 79: Oesterle Dep. of March 8, 1991, pp. 22-24/JA 491-493). Handelsman first met Bartley in June, 1988, two months after the formation of HVG. (R. 27: Handelsman Dep. of July 6, 1990, p. 32/ JA 447). Handelsman placed Bartley on his payroll at $2,000 per month plus expenses to act as a consultant who would advise and seek out investment opportunities in gas drillings. (R. 27: Handelsman Dep. of July 6, 1990, pp. 60-61/JA 447-448). Handelsman ceased doing business with Bartley the following year, when he and Bartley could not reach agreement on the terms of their continued relationship. (R. 27: Handelsman Dep. of July 6, 1990, p. 71/JA 449, R. 78: Handelsman Dep. of January 23, 1991, pp. 141-142/JA 466-467).

Petitioner maintains that he reached an oral agreement entitling him to the multi-million dollar interest at a breakfast meeting at Weber's Restaurant in Ann Arbor in June, 1988. (R. 33: Bartley Dep. of August 29, 1990, pp. 115-116/JA 288-289). The conversation at that meeting constitutes the entire foundation of this lawsuit. (R. 33: Bartley Dep. of August 29, 1990, p. 51/JA 273). Despite Bartley's habit of wearing a concealed tape recorder to important meetings (he has produced many hours of secretly taped conversations with Handelsman, none of which are part of the record, and none of which support his claims anyway, *see* JA 305), Bartley has no record whatsoever of the June, 1988 meeting.

Throughout his pleadings and testimony, Bartley has vaguely and in varying and wholly inconsistent terms attempted to describe the interest to which he feels he is entitled as a result of the June,

1988 meeting. (Opinion of the United States Court of Appeals for the Sixth Circuit issued May 27, 1993 at 6). In his complaint, Bartley originally described the carried interest upon which he sued as "ten percent of the gross proceeds" of the various successful prospects he had introduced to HVG. (JA 17). Exhibits "A", "B", "C", "D" attached to Petitioner's Sworn Complaint identified the specific leaseholds in which Petitioner claimed an interest. (JA 20-27).

When Respondents challenged this claim in their first Motion for Summary Judgment under the Michigan Statute of Frauds, arguing that Petitioner was demanding a *real property interest* without a signed writing, Petitioner retreated from this position and argued that in fact he was not claiming a real property interest, but rather a *joint venture interest.* (R. 25: Defendant's Motion for Summary Judgment, dated October 19, 1990/JA 32-68; R. 31: Plaintiff's Response to Defendant's Motion for Summary Judgment/JA 69-86). After oral argument on December 13, 1990, the Honorable Horace W. Gilmore denied Defendants' first Motion for Summary Judgment based upon Petitioner's argument that joint venture agreements need not be formalized by a writing. (R. 31: Plaintiff's Response to Defendant's Motion for Summary Judgment/JA 69-86; R. 49: Order dated January 31, 1991 denying Defendants' first Motion for Summary Judgment/JA 87-89). Based upon this clarification of Petitioner's position, Respondents thereafter conducted extensive discovery on the issue of whether a joint venture could have existed between the Petitioner and themselves. By the time the discovery cutoff date arrived on May 31, 1991, the parties had conducted 1,400 pages of testimony. (*See* Record generally). In addition, some 6,000 documents have been produced by one side or the other. (*See* Record generally).

When deposed, Bartley was unable to clearly define the interest he claims the parties agreed he would receive. The following inconsistent and contradictory excerpts from transcripts

of Bartley's deposition testimony demonstrate his inability to show that the parties ever reached a meeting of the minds or to describe the interest to which he claims he is entitled as a result of the June, 1988 meeting:

> 1. ". . . [We] started talking in terms of a ten percent carried interest with my contributing my earning, a ten percent carried interest as sweat equity and then contributing it to the joint venture for some equivalent ownership in the joint venture or the cash flow of the joint venture and some entity to be formed."

(R. 77: Bartley Dep. of January 22, 1991, Volume IIB, p. 141/JA 352).

> 2. ". . . [W]e didn't have an entity formed yet. We would at some point down the road, but in the meantime we would call ourselves Handelsman Venture Group, or do business under a loosely defined, a joint venture agreement, and the joint venture would be crafted by [Oesterle], an agreement would be crafted by him . . ."

(R. 77: Bartley Dep. of January 22, 1991, Volume IIB, pp. 141-142/ JA 352-353).

> 3. "The nuts and bolts, the agreement that we discussed and agreed to was that I would get ten percent carried interest in any oil or gas or any gas acquisitions that we made through any companies that I introduced them to. . ."

(R. 77: Bartley Dep. of January 22, 1991, Volume IIB, pp. 153-154/ JA 364-365).

Testimony from a later sworn question and answer session provide further evidence that Bartley himself was unsure of the nature of the interest that he claims he is entitled to receive under the contract he alleges:

> Q. I am just trying to understand if a distinction was made at that meeting between your getting a ten percent interest carried interest [sic] in various [drilling] prospects or your getting a ten percent interest in a joint venture.
>
> A. No. I am getting a ten percent interest in various prospects . . . And that ten percent interest in those prospects would be left in the partnership or in the joint venture . . . Let me rephrase that. I was getting a ten percent carried interest in the joint venture. My — *this really wasn't stated because it didn't get addressed . . .*

(R. 77: Bartley Dep. of January 22, 1991, Volume IIB, p. 177/JA 384) (emphasis added).

Although various drafts of proposed agreements were eventually exchanged back and forth (R. 87: Defendants' Motion for Summary Judgment dated May 31, 1991 Exhibits "B" through "E"/JA 121-132), no mutually acceptable writing was ever prepared or executed. (R. 33: Bartley Dep. of August 29, 1990, pp. 127-132/JA 292-297; R. 79: Oesterle Dep. of March 8, 1991, pp. 54-55/JA 512-513).

Shortly after the meeting, Handelsman made a large investment in Trendwell prospects.[2] Trendwell is the only

2. Trendwell Oil is a drilling company in northern Michigan.

company that the parties all agree was discussed at the June, 1988 meeting. Oesterle and Handelsman indicate that the meeting was limited to Trendwell. (R. 79: Oesterle Dep. of March 8, 1991, pp. 36-38, 45-48/JA 494-496, 503-506; R. 27: Handelsman Dep. of July 6, 1990, pp. 48-49/JA 445-446). Bartley helped negotiate the investment and Trendwell Oil gave Bartley a reduced price interest equal to approximately ten percent of the sums invested.[3] (R. 75: Tom Mall Dep. of August 16, 1990, pp. 57-59/JA 479-480; R. 79: Oesterle Dep. of March 8, 1991, pp. 70-71/JA 521-522). Later when Handelsman sought to pool his individual Trendwell interest with Bartley's interest into a limited partnership offering, Bartley refused. (R. 33: Bartley Dep. of August 29, 1990, p. 88/JA 284; R. 77; Bartley Dep. of January 22, 1991, Volume IIB, pp. 218-219; R. 27: Handelsman Dep. of July 6, 1990, p. 142/JA 467). To this day, Bartley continues to receive approximately $8,000 per year from Trendwell Oil. (R. 75: Tom Mall Dep. of August 16, 1990, pp. 59, 72-73/JA 480, 483-484).

Almost a year after the alleged oral joint venture agreement, Dr. Handelsman began investing heavily, as a general partner in various limited partnerships, in another operation known as Ward Lake Drilling. Although Bartley was involved (while on Handelsman's regular pay roll at the part-time rate of $2,000 per month) in introducing Handelsman to Ward Lake prospects, he apparently was never able to negotiate a finder's fee with Ward

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3. In his petition, Bartley points to a handwritten note appearing in one corner of a page in a ledger belonging to Handelsman as summarizing the respective participatory interests in Handelsman Venture Group and showing Bartley to have a 10 percent carried interest therein. As the Court of Appeals noted, that document, while demonstrating that Bartley did receive a percentage interest in Trendwell, does not bring Bartley any closer to showing what interest, if any, Handelsman orally promised him with regard to future prospects. (Appendix A to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit; Opinion of United States Court of Appeals for the Sixth Circuit issued May 27, 1993 at 7).

Lake of the sort he received from Trendwell. (R. 33: Bartley Dep. of August 29, 1990, p. 25/JA 265). Handelsman eventually entered into an independent lease arrangement with Ward Lake in Iosco County that was entirely unsuccessful. (R. 78: Handelsman Dep. of January 23, 1991, p. 119/JA 465). Bartley claims no entitlement or involvement in that effort. (R. 83: Bartley Dep. of April 29, 1991, pp. 175-177/JA 410-412). The balance of Handelsman's Ward Lake investments appear to be very successful. It is those successful investments, and those investments alone, that Bartley maintains are subject to his ten percent claim.

With discovery complete, Respondents were able to demonstrate that there were material facts, not in dispute which compelled summary judgment in Respondents' favor. (Defendants' Brief in Support of Summary Judgment dated May 31, 1991/JA at 90-165). The legal bases for this contention were twofold:

1. The sum total of all possible evidence on the subject revealed indisputably that the parties fell well short of reaching a legally enforceable agreement of any kind; and,

2. The legal requirements for Petitioner's "alternative" claim of *quantum meruit* could not be met.

The District Court granted the Respondents' Motion for Summary Judgment, holding that Petitioner had not alleged nor testified to the elements essential to the existence of a joint venture. (R. 118: Order Granting Defendants' Motion for Summary Judgment, dated September 5, 1991/JA at 28-29; R. 126/131: Transcript of Proceedings of August 8, 1991 Hearing on Defendants' Motion for Summary Judgment/JA at 232-234).

When that Motion was granted, Petitioner made a Motion for

Reconsideration in which he retreated from the position that his claims were based upon a joint venture and re-asserted his former position that his claim was based upon a "carried interest" in real property (R. 119: Plaintiff's Motion for Reconsideration dated September 9, 1991/JA 195-213), that Motion being denied by Order of October 2, 1991 (R. 124/JA 214). On October 21, 1991, Notice of Appeal was filed by the Petitioner seeking reversal of the District Court's Order Granting Defendants' Motion for Summary Judgment. (R. 133/JA 30-31).

The Court of Appeals for the Sixth Circuit affirmed the District Court's grant of Respondents' Motion for Summary Judgment on the alternative ground that by his failure to adequately define or explain the interest he claims in his suit, Bartley was unable to show that there was a meeting of the minds as to that essential term of the alleged contract. (Opinion of the United States Court of Appeals for the Sixth Circuit filed April 19, 1993 at 7-8). Thereafter, Bartley filed a Petition for Rehearing on April 29, 1993 which the Court of Appeals for the Sixth Circuit denied on May 19, 1993. Petitioner now seeks this Court's review of the judgment of the Court of Appeals.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW DOES NOT CONFLICT WITH THIS COURT'S PRIOR DECISIONS CONCERNING APPLICATION OF THE LAW OF SUMMARY JUDGMENT.

Although Petitioner asserts that this Court should review the decision of the Court of Appeals because it conflicts with decisions of this Court concerning application of the law of summary judgment, he completely fails to demonstrate that any conflict

exists. In fact, Petitioner fails to cite even one decision of the Supreme Court with which the decision below conflicts. Perhaps the best explanation for Petitioner's inability to demostrate the existence of such a conflict is that the Court of Appeals' application of the law of summary judgment comports with the standards set forth by this Court in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

The Court of Appeals found that Bartley's inability to define accurately the legal interest which he claims precludes him from demonstrating that there was a meeting of the minds on this essential element of the contract which he claims. The language of Rule 56(c) of the Federal Rules of Civil Procedure mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case. *Celotex*, 477 U.S. at 322. This Court further held in *Celotex*:

> In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Id. at 322-323.

While Petitioner is correct when he states that the Supreme Court looks at the record on summary judgment in a light most

favorable on the party opposing the motion, *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962), this does not in any way conflict with the decision below; for if the evidence that the non-moving party presents is merely colorable or is not significantly probative, summary judgment may be granted. *Anderson v. Liberty Lobby*, 477 U.S. 242, 249-250 (citing *Dombrowski v. Eastland*, 387 U.S. 82 (1967); *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 290 (1968)).

II.

THE DECISION BELOW DOES NOT CONFLICT WITH THE DECISIONS OF OTHER CIRCUIT COURTS CONCERNING APPLICATION OF THE LAW OF SUMMARY JUDGMENT.

In its allegation that the Court of Appeals' application of summary judgment conflicts with the decisions of other circuits, Petitioner cites various cases which pre-date this Court's own decisions on the proper standard for summary judgment. Petitioner states that "it was incumbent upon Respondents' [sic] as moving party to convince the Court that no facts exist herein which establish formation of the oral agreement alleged by Bartley." Petition at 52 (citing *Gertner v. Hospital Affiliates International, Inc.*, 602 F.2d 685, 689 (5th Cir. 1979). Since Respondents had relied only on Petitioner's own voluminous testimony to demonstrate the absence of any enforceable promise, even this pre-*Matsushita* test was clearly met in the instant case.

More importantly, however, this Court in *Matsushita* has rearticulated the standard for summary judgment post-*Gertner*. In *Matsushita*, this Court held that in order to survive a motion for summary judgment, "the non-moving party must come forward with 'specific facts showing there is a *genuine issue for trial*.' " *Matsushita Electric Industrial Co. Ltd. v. Zenith Radio Corp.*, 475

U.S. 574, 587 (emphasis in original). While the moving party must direct the court's attention to the absence of evidence supporting the non-moving party's case, it then becomes the non-moving party's responsibility to "go beyond the pleadings" to show there is a genuine issue for trial if he is not to lose the motion. *Burk v. Beene*, 948 F.2d 489 (8th Cir. 1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). In the case at bar, the Petitioner never came forward with evidence tending to demonstrate that there was a genuine issue for trial.

Petitioner fails to cite even one case dating after this Court's pronouncement of the current summary judgment standard as set forth in *Celotex, Matsushita* and *Anderson* to demonstrate a conflict between the decision below and other applicable decisions of other circuit courts. Since this Court's issuance of this trilogy of cases concerning the application of summary judgment, every circuit has followed and adopted the standard as set forth by this Court, including the Court of Appeals in the case below.[4] No conflict exists among the circuit courts as to the correct standard of summary judgment, nor does the Court of Appeals for the Sixth Circuit's decison conflict with applicable decisions of other United States Courts of Appeals.

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4. *Bias v. Advantage International, Inc.*, 905 F.2d 1558 (D.C. Cir. 1990); *United States v. O'Connell*, 890 F.2d 563 (1st Cir. 1989); *Carey v. Crescenzi*, 923 F.2d 18 (2nd Cir. 1991); *United States v. One 107.9 Acre Parcel of Land Located in Warren Township, Bradford County, Penna.*, 898 F.2d 396 (3rd Cir. 1990); *M&M Medical Supplies and Service, Incorporated v. Pleasant Valley Hospital, Incorporated*, 981 F.2d 160 (4th Cir. 1992); *Park Club, Inc. v. Resolution Trust Corp.*, 967 F.2d 1053 (5th Cir. 1992); *Harris v. Murphy Oil, U.S.A., Inc.*, 980 F.2d 991 (5th Cir. 1992); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989); *A.V. Consultants, Incorporated v. Barnes*, 978 F.2d 996 (7th Cir. 1992); *Burk v. Beene*, 948 F.2d 489 (8th Cir. 1991); *City of Vernon v. Southern California Edison Company*, 955 F.2d 1361 (9th Cir. 1992); *Clemmons v. Bohannon*, 956 F.2d 1523 (10th Cir. 1992); *Tipton v. Bergrohr GMBH-Siegen*, 965 F.2d 994 (11th Cir. 1992).

III.

THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT PRESENTS NEITHER A FEDERAL NOR CONSTITUTIONAL QUESTION.

This case does not involve any federal or constitutional issues which would warrant this Court's review. This entire exercise is an attempt by Petitioner to have the United States Supreme Court make a ruling on the meaning of Michigan oil and gas joint venture law.[5]

The only questions Bartley raises in his Petition turn on the particular facts of this case alone and are of interest only to the parties to it. In essence, Petitioner asks this Court to make a third review of the lengthy trial court record to see if it can find what two previous courts have been unable to find — proof that the parties ever reached a meeting of the minds or even could have reached a meeting of the minds when Bartley himself was unable to define the interest which he claims. This Court has ruled that such fact canvassing is not a task to be served by a grant of certiorari: "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925).

In the present case, Petitioner raises only questions which turn entirely on the facts of this case, already resolved twice in favor of Respondents, and without any impact outside of the limits of this case. Under these circumstances, a review by this Court is not warranted: "This Court being a court of law rather than a court for correction of errors in fact finding, cannot undertake to review

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5. Petitioner acknowledges that "[t]he law pertaining to joint ventures seems to vary in substantial degree from state to state." (Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit at 42).

concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Tank & Mfg. Co., Inc. et al. v. Linde Air Products*, 336 U.S. 271 (1949).

IV.

THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT WAS CORRECT AND DOES NOT WARRANT REVIEW BY THIS COURT.

The Court of Appeals' affirmance of the District Court's order granting Plaintiff's motion for summary judgment was correct. Contrary to Petitioner's allegations, an appellate court can find an alternative basis for concluding that a party is entitled to summary judgment on any ground that finds support in the record and ignore any erroneous basis relied upon by the district court. *Hansard v. Barret*, 980 F.2d 1059, 1061 (6th Cir. 1992); *Box v. A & P Tea Co.*, 772 F.2d 1372 (7th Cir. 1985).

The Court of Appeals for the Sixth Circuit affirmed the District Court's grant of summary judgment on the grounds that Bartley's inability to adequately define or explain the interest he claims in his suit precludes any rational trier of fact from finding that the parties had reached a meeting of the minds as to this essential element of the alleged oral contract under which Bartley claims he is entitled to recover.

Bartley has had adequate opportunity to brief and argue this issue. In both Defendants' Brief in Support of Motion for Summary Judgment, dated May 30, 1991, and in their Brief on Appeal, Respondents allege that the parties had not reached a "meeting of the minds" on essential contractual terms including the interest to which Bartley claims he is entitled. In their argument that essential terms of the contract were not even discussed let

alone agreed upon, Respondents state:

> Could Bartley be claiming ten percent of the entire limited partnership investments, or ten percent of just what Handelsman has invested in cash, or ten percent of some other number regarding these limited partnerships.

(R. 87: Brief in Support of Motion for Summary Judgment, dated May 30, 1991 at 15/JA 110; Brief on Appeal of Defendants-Appellees, dated March 11, 1992 at 23). In addition, the contradictory testimony which Bartley had given in deposition and which had been entered in the trial court record regarding the interest he claims he was to receive under the alleged contract[6] was brought to the attention of Bartley and both the District Court and Court of Appeals in Respondents' briefs to the respective courts. (R. 87: Brief in Support of Motion for Summary Judgment, dated May 30, 1991 at 9-14/JA 104-109; Brief on Appeal of Defendants-Appellees, dated March 11, 1992 at 14-16). Therefore, the Court of Appeals acted completely within its authority in affirming the District Court's grant of summary judgment on an alternative basis that had been raised before the trial court.

The Court of Appeals found that Bartley failed to define accurately the legal interest which he claims was promised him by Respondents and failed to put forth sufficient evidence to support a verdict that he was entitled to any specific interest in future prospects developed by the alleged joint venture. The Court of Appeals further held that through this failure, Bartley demonstrated that there could not be and was not a meeting of the minds of the parties on this essential element of the contract which he claims:

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6. *See* Counter Statement of the Case at 3-5.

> If Bartley himself does not know what his interest was to be, he can hardly be heard to claim that there was a meeting of the minds of the parties as to what his interest was to be. Thus, what Bartley has shown is that there was no meeting of the minds as to that essential element of the contract.

(Opinion of United States Court of Appeals for the Sixth Circuit issued May 27, 1993 at 10-11). Where a plaintiff attempting to get past a motion for summary judgment has "fail[ed] to make a showing sufficient to establish the existence of an element essential to [his] case," the case cannot be allowed to proceed. *Celotex*, 477 U.S. at 323; *Collins v. Nagle*, 892 F.2d 489, 493 (6th Cir. 1989).

In the instant petition, there has been no showing that the Court of Appeals ruled erroneously. In fact, based on the record before it, the Court of Appeals was entirely correct in affirming the District Court's grant of summary judgment in Respondents' favor as to counts I and II of the Petitioner's complaint.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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